IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2636 OF 2005

Triumph International Finance India Ltd. .. Applicants

V/s

The State of Maharashtra & Anr. .. Respondents

Shri Sanjog S. Parab for petitioners

Shri A.M. Shingarpure, APP for the State.

Coram : V.M.Kanade,J.

Dated : 26/04/2005.

P.C. :-

1 I have heard the learned counsel for the applicant and the learned APP for the State.

2 The petitioners are challenging the order of issuance of process passed by the Chief Metropolitan Magistrate,Esplanade, Mumbai in criminal case No.93/M of 2002. It is submitted by the learned counsel for the petitioners that the petitioners are not the drawers of the said cheque and, therefore, they are not liable under the provisions of section 138 of the Negotiable Instruments Act. It is submitted that it is an admitted position that cheque in question was signed by the accused No.2,Ketan

lieu of consent terms which were filed in summary suit filed by the complainant. It is submitted that this fact is further established from the averments made in the summary suit and the consent terms. The learned counsel appearing on behalf of the petitioners has invited my attention to the various orders passed in the contempt petition which was taken out by the complainant.In support of his submission that cheque in question was signed by the accused No.2 in his individual capacity, the learned counsel has invited my attention to section 7 of the Negotiable Instruments Act where the terms were drawn that drawer has been called “drawee”. It is submitted that in view of specific provisions under section 138 sub clause (c)of the said Act, the drawer of the cheque is liable for conviction. It is not possible to accept the submission made by the learned counsel appearing on behalf of the petitioners. On the perusal of the complaint it can be seen that the complaint is filed against Triumph International Finance India Ltd. and the accused No.2 to 4 were impleaded as accused since they were the Directors of the company and were in charge and responsible for the conduct of business of the company. The accused No.2 to 4 are, therefore, made liable under the provisions of section 141 of the Negotiable Instruments Act. I have perused the complaint which is annexed Exhibit “B”. In paragraph-2 there are specific averments that the accused are the

Directors were incharge and responsible for the conduct of business of the company and were attending the

day to day business of the company and, therefore, they are liable and responsible for the affairs of the company as contemplated under the provisions of 141 of the Negotiable Instruments Act.

3 In view of specific averments made in paragraph-2 merely because the cheques were signed by Ketan Parekh in his individual capacity as alleged by the petitioners, the question whether the petitioners are liable for conviction under the provisions of section 141 of the Negotiable Instruments Act can be answered only after evidence is adduced by both parties in the criminal case pending before the court of Metropolitan Magistrate. It is, therefore, not necessary to interfere with the order of issuance of process passed by the Chief Metropolitan Magistrate while exercising inherent power of this court under section 482 of the Criminal Procedure Code. All the questions raised in this petition are kept open and shall be decided by the trial court on merits and in accordance with law. Criminal writ petition is dismissed.

(V.M.Kanade,J.)